Supreme Court, U.S.
FILED
SEP 29 1992
OFFICE OF THE CLERK

92-661

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SPECK ARON ROSS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. The Tenth Circuit Court of Appeals' decision conflicts with this Court's decision in ***United States v. Agurs***, 427 U.S. 97 (1976) and the Second Circuit Court of Appeals' decision in ***United States v. Wallach***, 935 F.2d 445 (2d Cir. 1991) because the Tenth Circuit applied an incorrect standard requiring that it appear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained, rather than the correct standard, enunciated by this Court, that a conviction obtained by the knowing use of perjured testimony be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.

A. The prosecutor knowingly elicited false testimony from the government's star informant denying the informant's previous discussions with the prosecutor about the forfeiture proceedings against him and argued the false testimony during closing argument. Did this prosecutorial misconduct deny petitioner a fair trial?

B. The prosecutor knowingly elicited false testimony regarding the explanation of the star government informant's drug-positive urine tests. The prosecutor then attempted to bolster that false testimony through his impeachment of an expert witness whom the prosecutor knew or should have known was truthful. Finally, the prosecutor mischaracterized the expert witness's testimony during closing argument. Did this prosecutorial misconduct deny petitioner a fair trial?

II. The prosecutor's closing argument impugned defense counsel's motives notwithstanding the trial court's ruling that defense counsel properly questioned the government's star informant about his cooperation agreement. Did this prosecutorial misconduct deny petitioner a fair trial?

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SPECK ARON ROSS,

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner Speck Aron Ross respectfully requests that this Court issue its writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled proceeding on July 2, 1992.

OPINIONS BELOW

The opinion of the Tenth Circuit is reported, ***United States v. Langston, et. al.***, No. 91-2024, 1992 WL 148204 (10th Cir. 1992), and is reproduced in the appendix at App. 1-36.

JURISDICTION

The judgment to be reviewed was entered on July 2, 1992. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1) and Rule 10.1, Supreme Court Rules. The basis for federal jurisdiction in the district court was 18 U.S.C. § 3231.

CONSTITUTIONAL PROVISION INVOLVED

Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On November 14, 1989, Petitioner Speck Aron Ross (hereinafter "Ross") was indicted for conspiracy to manufacture more than 500 grams of amphetamine, manufacturing more than 500 grams of amphetamine and possession with intent to distribute more than 500 grams of amphetamine. On January 15, 1989, Ross was convicted on all three counts and sentenced to 168 months. Doc. 299, Judgment. Joseph Milton "Mitt" Lloyd was the government's star witness and the informant in this case. Lloyd managed a 56,000 acre ranch, known as the CA Ranch, located near Las Vegas, New Mexico, which his grandfather had left in trust for him and his three siblings. Tr. Vol. II. at 173-74.

Lloyd was arrested by state police officers leaving the CA Ranch on July 16, 1989. Tr. Vol. III at 311. Searching the trunk, the officer found a plastic garbage bag containing approximately 11 pounds of amphetamine. Tr. Vol. VII at 1319; App. 6. State police officers then executed a search warrant for the CA Ranch where they seized an additional one pound of amphetamine and

lab equipment. Tr. Vol. IV at 751-53; App. 6.

Lloyd was later charged with possession with intent to distribute amphetamine and other related charges. In October, 1989, he entered into a cooperation agreement with the government which reduced his potential incarceration from approximately 20 years to approximately 2 years. Defendant's Exhibit K; Tr. Vol. II at 175; Tr. Vol. III at 495-96, 499; App. 7. Lloyd provided the government with Ross's name and Ross was arrested.

At the same time the criminal prosecution of Lloyd was underway in the fall of 1989, the government was preparing a collateral civil proceeding to forfeit Lloyd's interest in the CA Ranch. Tr. Vol. III at 465, 497; App. 15. During the trial, the prosecutor asked Lloyd, "Did you at any time discuss or negotiate, with an individual in the U.S. Attorney's office, any matter relating to the forfeiture?" To which Lloyd replied, "No, I did not." Tr. Vol. II at 178; App. 15. The same prosecutor who elicited this testimony, AUSA Presiliano Torrez, had discussed the forfeiture

with Lloyd the previous day. Tr. Vol. III at 482. Under cross-examination, Lloyd conceded that his direct testimony was "[n]ot entirely true." Tr. Vol. III at 347; Tr. Vol III at 482; App. 15. Ross moved the court to dismiss the charges based on prosecutorial misconduct, which the court denied. Tr. Vol. IV at 552-557. The prosecutor argued the perjured testimony regarding the forfeiture in closing when he told the jury that "somehow there is an insinuation that there is a promise in terms of the forfeiture . . . There are no side deals in a criminal case." Ross objected to the false statement and the trial court instructed the jury to disregard the statement. Tr. Vol. X at 1828. Lloyd also admitted that while under pre-trial supervision, three random urinalyses which he had submitted had been positive for controlled substances, one of which was for amphetamine. Tr. Vol. III at 316, 424-25. The prosecutor elicited that Lloyd had been receiving a sinus medication from his doctor that Lloyd claimed could have caused the false positive results. Tr. Vol. III at 317, 424-25; Government Exhibit 45.

During the defense case, Dr. David Fretthold, the scientific director of Pharmchem Laboratories, the company that holds government contracts for drug testing throughout the United States, testified that the medication Lloyd claimed he took would not have caused the positive test result for amphetamine. Tr. Vol. VIII at 1463. On cross-examination, the prosecutor attempted to impeach Dr. Fretthold by asking him to assume that Lloyd had ingested Vicks Inhaler even though the record contained no evidence that Lloyd had ever used a Vicks Inhaler. App. 18. He asked Dr. Fretthold if it were possible that his tests could be inaccurate as a result of the ingestion of Vicks Inhaler. Dr. Fretthold testified unequivocally that the Vicks Inhaler would not cause a false positive amphetamine test. Tr. Vol. VIII at 1491. Dr. Fretthold believed that Lloyd had used amphetamines during the time he was on pre-trial release. Tr. Vol. VIII at 1496.

The prosecutor argued the impeachment testimony regarding the urine tests in closing. Ross timely objected on the ground that the argument was a misstatement of the evidence.

The trial court agreed but did not instruct the jury to disregard the statement. "As I recall that is how it was. The jury will recall the evidence." Tr. Vol. VIII at 1841-42.

The prosecutor also argued that Ross's counsel had "an improper purpose" (Tr. Vol. IX at 1638) when she cross-examined Lloyd to show the sentence Ross would have faced without the benefit of his cooperation agreement with the government, although the trial court had overruled the prosecutor's objection to this line of cross-examination. Tr. Vol. III at 491. Ross moved for a mistrial which the trial court denied. Tr. Vol. IX at 1640.

REASONS FOR GRANTING THE WRIT

I. **THE TENTH CIRCUIT COURT OF APPEALS' DECISION CONFLICTS WITH THIS COURT'S DECISION IN *UNITED STATES V. AGURS*, 427 U.S. 97 (1976) AND THE SECOND CIRCUIT COURT OF APPEALS' DECISION IN *UNITED STATES V. WALLACH*, 935 F.2D 445 (2D CIR. 1991), BECAUSE THE TENTH CIRCUIT APPLIED AN INCORRECT STANDARD REQUIRING THAT IT APPEAR BEYOND A REASONABLE DOUBT THAT THE ERROR COMPLAINED OF DID NOT CONTRIBUTE TO THE VERDICT OBTAINED, RATHER THAN THE CORRECT STANDARD ENUNCIATED BY THIS COURT, THAT A CONVICTION OBTAINED**

BY THE KNOWING USE OF PERJURED TESTIMONY BE SET ASIDE IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY.

A. THE PROSECUTOR KNOWINGLY ELICITED FALSE TESTIMONY FROM THE GOVERNMENT'S STAR INFORMANT DENYING THE INFORMANT'S PREVIOUS DISCUSSIONS WITH THE PROSECUTOR ABOUT THE FORFEITURE PROCEEDINGS AGAINST HIM AND ARGUED THE FALSE TESTIMONY DURING CLOSING ARGUMENT. THIS PROSECUTORIAL MISCONDUCT DENIED PETITIONER A FAIR TRIAL.

This court has held that the government has a constitutional duty to alert the defense when one of its witnesses gives false testimony. *Mooney v. Holohan*, 294 U.S. 103 (1935). The prosecutor also has a duty to correct false testimony from one of its witnesses. *Alcorta v. Texas*, 355 U.S. 28 (1957); ABA Standards for Criminal Justice, § 3-5.6(a) ("It is unprofessional conduct for a prosecutor knowingly to offer false evidence, . . . or fail to seek withdrawal thereof upon discovery of its falsity"). This duty to correct false testimony extends to testimony that relates

solely to the witness's credibility. ***Napue v. Illinois***, 360 U.S. 264 (1959). Even if the prosecutor is not actually aware of his witness's perjury but he "should have known" of the perjury, he violates the defendant's right to due process by presenting the false testimony. ***Giglio v. United States***, 405 U.S. 150 (1972). In the instant case, the government not only knew of the falsity, it was the prosecutor who knowingly presented false testimony concerning the forfeiture proceedings against the informant Lloyd's property.

The Tenth Circuit Court of Appeals incorrectly employed the standards set out by this Court and erroneously held that Lloyd's perjurious testimony concerning the forfeiture of the CA Ranch was not material. The court held that the applicable test "is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." App. 16 (citations omitted). This Court has consistently held, however, "that a conviction obtained by the knowing use of perjured testimony . . . must be set aside if there is any reasonable

likelihood that the false testimony could have affected the judgment of the jury." ***United States v. Agurs***, 427 U.S. 97, 103 (1976). Therefore, the Tenth Circuit did not apply the correct standard in this case.

In ***United States v. Wallach***, 935 F.2d 445 (2d Cir. 1991), the Second Circuit correctly applied the ***Agurs*** test and reversed the defendant's conviction. The Second Circuit recognized that there are two standards of review that are utilized in determining whether the introduction of perjured testimony requires a new trial. If the prosecution knew or should have known of the perjury, the conviction must be set aside "'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'" ***Wallach*** at 456 (quoting ***Perkins v. LeFevre***, 691 F.2d 616, 619 (2d Cir. 1982)) (quoting ***United States v. Agurs***, 427 U.S. 97, 103 (1976)). Moreover, "if it is established that the government ***knowingly*** permitted the introduction of false testimony reversal is 'virtually automatic,'" ***Id., quoting United States v. Stofsky***, 527 F.2d 237, 243 (2d Cir. 1975) (***citing Napue v.***

Illinois, 360 U.S. 264, 269 (1959)) (emphasis added). Where the government is unaware of the perjury a new trial must be granted "if the testimony was material and the court is left with a firm belief that but for the perjured testimony, the defendant would most likely not have been convicted." ***Wallach*** at 456 (citations omitted).

In the instant case the government was aware of the perjury. Tr. Vol. III at 482; App. 16. Therefore, the first standard applies here and this Court must reverse because there is a reasonable likelihood that the perjury could have affected the judgment of the jury.

The Tenth Circuit appeared to rely on the fact that defense counsel had an opportunity to cross-examine and impeach Lloyd. In ***United States v. Kaplan***, 470 F.2d 100 (7th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973), the Seventh Circuit rejected the government's argument that other impeachment evidence nullified its use of and failure to correct false testimony concerning whether a witness had been promised anything in exchange for his

full cooperation. That court, applying the correct standard from *Agurs*, held that the government's failure to disclose the falsity of its witness's testimony constituted constitutional error. "[G]iven the strict standards advanced for reviewing prosecutorial misconduct of this type," the court granted a new trial on the charge which **may have been affected** by the false testimony. *Id.* at 103 (emphasis added).

In *Wallach*, as here, the perjurious witness was the witness most critical to the government's case. In *Wallach*, as here, the government gave the jury the impression that the witness, although a criminal himself, had decided to tell the truth now.

The most egregious misconduct, in *Wallach*, as here, was the prosecutor's act of vouching for the witness's credibility in closing argument. After Lloyd admitted that he had discussed his forfeiture with the prosecutor, the defense introduced a letter from AUSA Roger Copple to Lorenzo Garcia, counsel for the trust that owned the CA Ranch. The letter said *inter alia*, "The cooperation of Joseph M. Loyd [sic] with criminal division and the

results of such cooperation may effect [sic] the position of the United States with respect to the forfeiture." Defendant's Exhibit J; Tr. Vol. III at 468. Incredibly, the prosecutor argued in closing that there "are no side deals in a criminal case." Tr. Vol. at 1827-28. This calculated attempt to vitiate the impeachment of Lloyd's perjurious testimony only compounded the misconduct created by eliciting the perjury in the first place. The Tenth Circuit did not even discuss the closing argument misconduct; therefore, the court failed to analyze the error flowing from the prosecutor's closing argument misconduct regarding the forfeiture.

The Tenth Circuit's conclusion that Lloyd's statement was not reversible error because it "did not contribute to the verdict", citing ***Yates v. Evatt***, 111 S. Ct. 1884 (1991) (App. at 17), applies the wrong standard and ignores the facts of this case. Lloyd was the government's star witness. Without Lloyd the government would never have known about Ross. Without Lloyd the government could not make a case against Ross. Bolstering its primary evidence against Ross, the government knowingly elicited

perjured testimony and then knowingly argued the same perjury. The appellate court answered the wrong question when it held that Lloyd's perjurious statements were not material. The correct question was whether Lloyd's statement and the government's use of that statement "could have affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103 (1976). Applying that standard, this Court should reverse Ross's conviction.

B. THE PROSECUTOR KNOWINGLY ELICITED FALSE TESTIMONY REGARDING THE EXPLANATION OF THE STAR GOVERNMENT INFORMANT'S DRUG-POSITIVE URINE TESTS. THE PROSECUTOR ATTEMPTED TO BOLSTER THAT FALSE TESTIMONY THROUGH HIS IMPEACHMENT OF AN EXPERT WITNESS WHOM HE KNEW OR SHOULD HAVE KNOWN WAS TRUTHFUL. THE PROSECUTOR MISCHARACTERIZED THE EXPERT WITNESS'S TESTIMONY DURING CLOSING ARGUMENT. THIS PROSECUTORIAL MISCONDUCT DENIED PETITIONER A FAIR TRIAL

The Tenth Circuit found no reversible error in the prosecutor's use of false testimony about Lloyd's pretrial drug use, the prosecutor's attempt to impeach a truthful expert witness

about the drug use and the prosecutor's mischaracterization of the truthful expert's testimony during closing argument. App. 17-18. The court applied the same erroneous analysis it applied to the misconduct regarding the forfeiture proceedings: "Assuming Lloyd's testimony was false, we are satisfied that his denial of pretrial amphetamine use, and his attempted explanation for the positive test results, did not contribute to the verdict under the ***Yates v. Evatt*** test". App. 17. However, again, "the government ***knowingly*** permitted the introduction of false testimony [therefore,] reversal is 'virtually automatic,'" ***United States v. Wallach***, 935 F.2d 445, 456 (2d Cir. 1991), *quoting* ***United States v. Stofsky***, 527 F.2d 237, 243 (2d Cir. 1975) (*citing* ***Napue v. Illinois***, 360 U.S. 264, 269 (1959)) (emphasis added).

The prosecutor misled this jury into believing that his principal government witness did not possess and use controlled substances, indeed the very same controlled substance which these

defendants were charged with manufacturing.[1] First, the prosecutor allowed Lloyd to commit perjury by denying that he was using amphetamines during the time he was on pre-trial release and submitted drug-positive urine tests. Then the prosecutor bolstered that perjury by impeaching Dr. Fretthold, whom he knew was a truthful witness. The prosecutor knew that Dr. Fretthold's drug tests were accurate. The prosecutor knew that Dr. Fretthold testified throughout the country on behalf of the government based on his drug tests. The prosecutor knew the government vouched for Dr. Fretthold's drug tests on a daily basis. Yet, the prosecutor led this jury to believe that Dr. Fretthold's tests were inaccurate in this case. He engaged in this misconduct to avoid the obvious problems presented by the government's star witness possessing and using illegal drugs during the time he was working for the government preparing this case against Ross and his co-defendants. "A prosecutor should not use the power of

[1] *Lloyd was the only defendant arrested in possession of amphetamine. He was also the only one involved in this case ever found to be using amphetamine. Tr. Vol. VII at 1319.*

cross-examination to discredit or undermine a witness if the prosecutor knows the witness is testifying truthfully." ABA Standards for Criminal Justice, § 3-5.7(b).

Until Dr. Fretthold testified in this case, no prosecutor had ever challenged the validity of a positive test which he had conducted. Tr. Vol. VIII at 1453. Indeed, the United States Attorney's Office which presented this false testimony relies on and vouches for the credibility of Pharmchem chemists and these drug tests daily when seeking to revoke probationers and people on pre-trial release programs, such as Lloyd. Tr. Vol. VIII at 1453, 1470-1471. In the face of this knowledge, the prosecutor argued the impeachment testimony regarding the urine tests in closing. "He also testified that there is something on the market that he wishes . . . was not on the market, and that is that there are some inhalers on the market, I think the Vicks inhaler in particular, that . . . it is possible to have that kind of. . . reaction with respect to the amphetamine." Tr. Vol. at 1841-42. This argument was a wholesale and deliberate mischaracterization of

Dr. Fretthold's testimony.

The prosecutor was implying that Dr. Fretthold testified that Vicks Inhaler could interfere with his test results. The prosecutor capitalized on the innuendo he previously had planted in the jury's mind that Lloyd tested positive for amphetamine as a result of using Vicks Inhaler. He argued this even though Lloyd never said he used Vicks Inhaler and Dr. Fretthold unequivocally testified that "you can't get only amphetamine by taking Vicks inhalant." Tr. Vol. VIII at 1491.

Lloyd's testimony was of critical importance to the government in this case. Without the jury's belief in his testimony, the government could not have successfully prosecuted Ross. The inescapable conclusion is that the government was willing to go to any lengths to secure Ross's conviction. The witness whom the government allowed and encouraged to present perjured testimony was the witness critical to Ross's conviction. The government's bolstering of its perjurious witness by impeaching a truthful expert witness and, failing that, arguing as though the witness had been

impeached, was unconscionable.

This Court has previously dealt harshly with the knowing use of false testimony because it is seen as a direct threat to the integrity of the criminal justice system. "As a matter of principle, we perceive no less an infringement of a defendant's rights by the knowing use of perjured testimony than by the deliberate withholding of exculpatory information. The conduct in either case is reprehensible, warranting criminal prosecution as well as disbarment." ***Imbler v. Pachtman***, 424 U.S. 409, 431 n. 33 (1976). See also *California v. Trombetta*, 467 U.S. 479 (1984), where this Court said in *dicta* that it is "rudimentary" that the prosecution has a constitutional obligation to report to the defendant and to the trial court when a government witness lies under oath. ***Id.*** at 485 (citations omitted). Because of the damaging effect to our entire system of justice, courts must review very strictly such knowing use of perjured testimony.

This Court has recently reiterated that "before a federal constitutional error can be held harmless, the court must be able

to declare a belief that it was harmless beyond a reasonable doubt." ***Arizona v. Fulminante***, 111 S. Ct. 1246, 1257 (1991). In other words, the government has the burden of "demonstrating that the [constitutional error] . . . did not contribute to . . . . [the defendant's] conviction." ***Id.*** The government did not meet that burden here. Applying the correct test, this Court must reverse Ross's conviction because this misconduct could have effected the jury's verdict.

II. THE PROSECUTOR'S CLOSING ARGUMENT IMPUGNED DEFENSE COUNSEL'S MOTIVES NOTWITHSTANDING THE TRIAL COURT'S RULING THAT DEFENSE COUNSEL PROPERLY QUESTIONED THE GOVERNMENT'S STAR WITNESS ABOUT HIS COOPERATION AGREEMENT. THIS PROSECUTORIAL MISCONDUCT DENIED PETITIONER A FAIR TRIAL.

Ross was convicted through the words of Mitt Lloyd, a co-defendant turned informant. Without Lloyd's testimony, Ross would not even have been arrested. Without Lloyd's cooperation with the government in exchange for substantial leniency as to his sentence, his assets, even his pre-trial release conditions, Ross

would not have been convicted. Ross cross-examined Lloyd regarding his motive to testify for the government, including the number of years of incarceration that he was avoiding through his cooperation agreement with the government which provided for the government to move for a reduction of his mandatory sentence pursuant to U.S.S.G. § 5K1.1. Tr. Vol. at 491. This cross-examination, to which the trial court overruled the prosecutor's objection, was entirely proper. Yet, in closing, the prosecutor argued that Ross's attorney's cross-examination was inspired by an "improper purpose . . . the reason she brought this out in such considerable detail was primarily to show a possible sentence that the defendants would be facing if the evidence shows beyond---." Tr. Vol. IX at 1638. The Tenth Circuit concluded that the prosecutor's comment which impugned defense counsel's motives did not influence the jury to convict Ross. App. 19.

This is not the first case to raise this problem to the appellate court. There is a pervasive pattern within the United

States Attorney's office in the District of New Mexico to ignore the ethical and constitutional parameters of prosecution, particularly in the area of closing argument. The Tenth Circuit has frequently admonished prosecutors from this district for their improper closing arguments. See e.g. *United States v. Pena*, 930 F.2d 1486, 1490 (10th Cir. 1991) (prosecutor's remarks were calculated to mislead the jury and placed an improper inference into minds of jurors); *United States v. Arbizu*, 833 F.2d 244, 247 (10th Cir. 1987) (prosecutor's statement of what defense counsel must have been thinking placed an improper inference into minds of jurors); *United States v. Rios*, 611 F.2d 1335, 1343 (10th Cir. 1979) (prosecutor's personal attacks on defense counsel and prosecutor's reference to facts and evidence not in evidence were clearly improper); *United States v. Siviglia*, No. 76-1914 (10th Cir., June 5, 1978) (unpublished) (prosecutor's closing arguments improperly diverted the trial and attention of the jury to a trial of Siviglia's attorney). Unfortunately, the prosecutors continue to act improperly because all too often the appellate court affirms

convictions even when it finds obvious misconduct.

The Tenth Circuit has previously held that it must view the comments of the prosecutor in the context of the record before the jury to determine whether the comments were sufficient to influence a jury to render a conviction on grounds beyond the evidence that was presented. ***United States v. Dickey***, 736 F.2d 571, 596 (10th Cir. 1984), ***cert. denied***, 469 U.S. 876 (1984). That test has been met in the instant case, because the prosecutor's comments were extremely prejudicial to Mr. Ross and very well may have influenced the jury to convict him.

Here, as in ***United States v. Arbizo***, 833 F.2d 244, 247 (10th Cir. 1987), "the prosecutor's remark, referring to what defense counsel must have been thinking, placed an improper inference into the minds of the jurors and was clearly inappropriate." In the instant case, the prosecutor premised his argument on his personal opinion and not on any admitted evidence. He made this argument even though he was already on notice that the argument was improper because the trial court had overruled his objection

to defense counsel's cross-examination. The prosecutor impugned the motives of the defense attorney, thereby directly undercutting the defendant's right to counsel.

In ***United States v. Young***, 470 U.S. 1 (1985), this Court reversed the Tenth Circuit Court of Appeals because the defense raised no objection and the appellate court did not find that the prosecutorial misconduct at closing constituted plain error. This Court, however, continued to affirm its long-standing view that prosecutors "must not be permitted to make unfounded and inflammatory attacks on the opposing advocate," ***Id.*** at 9, and should "refrain from improper methods calculated to produce a wrongful conviction." ***Id.*** at 7 (citation omitted).

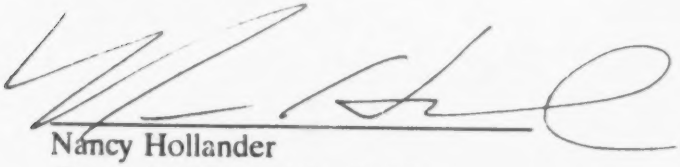
Only Lloyd put Ross at the CA Ranch with the co-defendants during the relevant time period. Only Lloyd turned Ross's fingerprints from those of a passing visitor interested in a deer lease into those of an amphetamine manufacturer. Because Lloyd's credibility was so crucial, the prosecutor apparently felt it necessary to shore it up whenever and however possible. The

prosecutor's misconduct was not harmless but went to the core of this case and undercut it. This prosecutorial misconduct denied Ross a fair trial and this Court should reverse his conviction.

CONCLUSION

For the foregoing reasons, petitioner Speck Aron Ross respectfully requests that this Court grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, and reverse his conviction.

Respectfully submitted,



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